

## **REMARKS**

### **Specification**

In the specification, the title has been objected to as being non-descriptive. Applicant respectfully submits that the current title is descriptive and properly describes the subject matter of the invention. Accordingly, Applicant respectfully requests removal of the objection.

### **Summary**

Claims 1-30 stand in this application. Claims 1, 10, 17 and 24 are currently amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

### **35 U.S.C. § 102**

At page 2, paragraph 3 of the Office Action claims 1-5 and 8-30 stand rejected under 35 U.S.C. § 102 as being anticipated by United States Patent Number (USPN) 7,136,392 to Wentink (hereinafter "Wentink"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the anticipation rejection.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended claims 1, 10, 17 and 24 in order to facilitate prosecution on the merits. Applicant submits that the amendments merely clarify, either expressly or impliedly, what was already present in the claims.

Applicant respectfully submits that to anticipate a claim under 35 U.S.C. § 102, the cited reference must teach every element of the claim. *See* MPEP § 2131, for example. Applicant submits that Wentink fails to teach each and every element recited in claims 1-5 and 8-30 and thus they define over Wentink. For example, with respect to claim 1, Wentink fails to teach, among other things, the following language:

determining a size of packets to be used for transmitting data associated with the service.

According to the Office Action, this language is disclosed by Wentink at Col. 8, lines 47-48. Applicant respectfully disagrees.

Applicant respectfully submits that claim 1 defines over Wentink. Wentink at the given cite, in relevant part, states:

The CWmin[TC] values field contains 8 octets which specify, in the illustrative embodiment, eight contention window values, for the eight traffic categories 0 through 7, respectively. Each contention window value is 1 octet in length and contains an unsigned integer. CWmin[TC] values update the CWmin[TC] values when received by a station.

As indicated above, Wentink arguably discloses a CWmin values field that contains 8 octets. These CWmin values specify eight contention window values for eight traffic categories. The contention window values are used to generate a random backoff period for a queue. By way of contrast, the claimed subject matter determines the size of packets to be used for transmitting data associated with the service. Applicant respectfully submits that determining the size of a packet to be used for transmitting data is clearly different than associating contention window values with traffic categories. By controlling the size of packets used to transmit data it is possible to control packetizing delays. Consequently, Wentink fails to disclose all the elements or features of the

claimed subject matter. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claim 1. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 2-5, 8 and 9, which depend from claim 1 and, therefore, contain additional features that further distinguish these claims from Wentink.

Claims 10, 17 and 24 features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 10, 17 and 24 are not anticipated and are patentable over Wentink for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claims 10, 17 and 24. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 11-16, 18-23 and 25-30 that depend from claims 10, 17 and 24 and therefore contain additional features that further distinguish these claims from Wentink.

### **35 U.S.C. § 103**

At page 20, paragraph 5 claims 6 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wentink in view of U.S. Patent Pub. 2004/0136396 to Yonge, III et al. (hereinafter “Yonge”). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of

ordinary skill in the art, to modify the reference or to combine reference teachings.

Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

Applicant respectfully submits that the cited portions of Yonge fail to disclose the claim limitations of claim 1 as discussed above. Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. See MPEP § 2143.03, for example. Accordingly, removal of the obviousness rejection with respect to claims 6 and 7 is respectfully requested. Claims 6 and 7 are non-obvious and patentable over Wentink and Yonge, taken alone or in combination, at least on the basis of their dependency from claims 1. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

### **Conclusion**

For at least the above reasons, Applicant submits that claims 1-30 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above.

Appl. No. 10/728,676  
Response Dated January 22, 2008  
Reply to Office Action of August 22, 2007

Docket No.: 1020.P17115  
Examiner: Sciacca, Scott M.  
TC/A.U. 2146

Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-30 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned at 724-933-9338 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to deposit account 50-4238.

Respectfully submitted,

KACVINSKY LLC

/John F. Kacvinsky/

John F. Kacvinsky, Reg. No. 40,040  
Under 37 CFR 1.34(a)

Dated: January 22, 2008

KACVINSKY LLC  
C/O Intellevate  
P.O. Box 52050  
Minneapolis, MN 55402  
(724) 933-5529